

At preliminary hearing, claimant requested permission to amend the date of accident to include the dates May 30, 2001, through July 13, 2001, claimant's last day worked with respondent. Claimant originally alleged a series of injuries to her low back, citing each and every working day ending June 4, 2001. Date of accident is not an issue over which the Board will take jurisdiction on appeal from a preliminary hearing order. This issue is, therefore, dismissed. See Lewis v. National Beef Packing Company, WCAB No. 220,182 and 220,242 (Nov. 1997).

Claimant testified that she suffered a specific onset of pain on May 30, 2001, while turning a resident. She further testified that she advised her supervisor shortly after and reported the incident to Randy Lawson, respondent's human resources director, on June 4. Claimant's supervisor, Charlotte Smith, testified that she had no conversation with claimant on or about May 30 regarding any accident and it was not until July 5 or 6 that claimant actually advised her that she had suffered a work-related accident.

Mr. Lawson was aware claimant was having physical problems as he was provided a slip from Jill Johnson-Smith, R.P.A., the physician's assistant for Stephen F. Lemons, M.D., her personal physician, restricting claimant's lifting, bending and twisting at work. This note was provided shortly after the June 4, 2001, appointment claimant had with Preferred Medical Associates in Andover, Kansas.

Respondent denies that claimant suffered any aggravation or new accidental injury after the May 30, 2001 incident and further denies that claimant provided timely notice of accident. A review of the medical records, specifically those from Preferred Medical Associates, including Ms. Johnson-Smith and Dr. Lemons, shows a progressive history of problems. Claimant first was examined by Ms. Johnson-Smith on June 4, 2001. Ms. Johnson-Smith's note specifically identifies that claimant was doing lifting and bending at work and also states that claimant's back had never been like this before. Claimant had a history of ongoing back problems of which respondent was aware.

The medical notes of Ms. Johnson-Smith and Dr. Lemons indicate that by June 11, claimant was much improved and having little difficulty. Her symptoms had resolved to where she was only experiencing a few twinges every once in a while. Range of motion was normal, with no tenderness to palpation.

The June 25, 2001 medical note, however, indicates claimant suffered from increased back pain, which she indicated resulted from increased lifting at work. The note specifically states that the lifting at work "has set off her back again." The Board finds that claimant has proven accidental injury arising out of and in the course of her employment through June 25, 2001.

Respondent acknowledges receiving notice of accident on either July 5 or July 6, 2001. As either date is within 10 days of June 25, 2001, the requirements of K.S.A. 44-520 that notice be provided within 10 days would be satisfied.

The Board, therefore, finds that the Order of the Administrative Law Judge dated January 23, 2002, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 23, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director